



**University of
Nottingham**
Human Rights Law Centre

Event Report

**CLIMATE CHANGE, BUSINESS
AND HUMAN RIGHTS
ROUNDTABLE**

21 March 2023

Presented by the Business and Human Rights Unit



CLIMATE CHANGE, BUSINESS AND HUMAN RIGHTS ROUNDTABLE

Event Report – Business and Human Rights Unit

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INTRODUCTION

On 21 March 2023, the University of Nottingham Human Rights Law Centre (HRLC), Business and Human Rights Unit (BHR Unit) hosted an expert roundtable to explore the link between climate change, business operations and human rights. This event was organised and chaired by Dr Klara Polackova Van der Ploeg, Assistant Professor at the University of Nottingham School of Law and the Head of the BHR Unit.

The BHR Unit was joined by a range of expert speakers, including Professor Robert McCorquodale, Dr Ekaterina Aristova, Dr Monika Feigerlová and Dr Lara Bianchi, to share their views and perspectives on climate change and human rights, the responsibilities of businesses in relation to climate change mitigation and adaptation, as well as accountability mechanisms (and barriers to accountability) for corporate failure to take adequate climate action.

BUSINESS ESSENTIAL TO CLIMATE ACTION

In her introductory remarks, Dr Van der Ploeg noted that just the day before, the Intergovernmental Panel on Climate Change issued in its 6th report a "final warning" on the climate crisis, concluding that swift and drastic action is needed to avoid catastrophic changes to living conditions on Earth. While the risks of climate change and the human contribution to it have been understood for decades, the world has found it difficult to take action. At the international level, different approaches to coordinating and compelling state action have been attempted, but neither the top-down approach of the Kyoto Protocol nor the bottom-up approach of the Paris Agreement have been effective. It is clear that proactive action across all parts of the world's society is needed for

meaningful climate action, with industry and businesses playing a crucial role.

In recent years, there have been two major shifts in relation to climate change. Firstly, climate change has become a more central issue in public discourse, which has led some businesses to make genuine efforts to reduce their climate impacts, while compelling others to at least present themselves as environmentally conscious (and creating situations of greenwashing or, specifically, climate washing). Still, some businesses continue denying human-induced climate change or the extent of their contribution to it. Secondly, there has been a more aggressive use of law by different actors to compel climate change action and contain the warming of the Earth's climate. Lawsuits filed in the European Court of Human Rights for violations of the rights protected under the Convention, and litigation against states and businesses in domestic courts are examples of such uses. The purpose of the Roundtable was therefore to examine what the law requires of businesses in relation to climate change.

CLIMATE CHANGE AND THE BUSINESS AND HUMAN RIGHTS FRAMEWORK

Professor Robert McCorquodale, a member of the UN Working Group on Business and Human Rights, highlighted how climate change fits within the business and human rights framework. In implementing the UN Guiding Principles on Business and Human Rights (UNGPs), the Working Group is guided by three pillars: state duty to protect human rights, business responsibility to respect human rights and effective access to remedies. Although the UNGPs make no specific reference to climate change, they provide an authoritative statement from the UN Human Rights Council that

recognises the human rights responsibilities of businesses.

The 2015 Paris Agreement and the UN General Assembly's resolution recognising the right to a clean, healthy and sustainable environment as human rights, as well as the appointment of the Special Rapporteur on Climate Change and Human Rights are important international developments. Additionally, UNGP Principle 12 states that the responsibilities of business enterprises are to be understood as those expressed in the International Bill of Human Rights and the International Labour Organization's Declaration on Fundamental Principles and Rights at Work. UN bodies that monitor the implementation of relevant treaties and other international instruments have begun interpreting them in a manner that considers climate change. For example, the International Labour Organisation has stated that a safe and healthy working environment is part of the Fundamental Principles and Rights at Work.

Professor McCorquodale suggested that the Working Group has enough basis to adopt a dynamic interpretation of the UNGPs, not restricted to the text in General Principle 12. This means that states need to regulate business conduct in relation to climate change, lead by example, review international agreements and obligations, and integrate climate change in all their activities. Businesses should integrate climate change in all activities, including financial and collective actions. They should also act responsibly, avoiding greenwashing and acting transparently with governments. Human rights due diligence should extend to environmental damage and climate change impacts. Access to remedy requires increased accountability, appropriate and effective remediation and prevention, as well as the protection of human rights defenders, given that UNGP Principle 14 states that

the severity of the human rights impacts of business activities will be judged by their scale, scope and irremediable character.

However, there are some challenges associated with the application of the UNGPs in the context of climate change, such as whether obligations and responsibilities apply to all states and businesses or only some; how to regulate business conduct in relation to climate change; who can bring a claim or communication in relation to climate change; and what constitutes appropriate and effective reparation.

CLIMATE CHANGE LITIGATION AGAINST CORPORATIONS

Dr Ekaterina Aristova of the Bonavero Institute for Human Rights, University of Oxford, discussed how climate change-related litigation against corporations has been used to drive human rights accountability of both state and non-state actors. Cases have been brought by indigenous communities, civil society and young people in international, regional and domestic courts. As of 13 March 2023, the Sabin Center for Climate Change Law recorded 122 cases against corporations outside of the US in 26 jurisdictions.

Climate change litigation against corporations may be categorised in different ways. The most conventional approach is to distinguish cases based on their impact and classify them as strategic (brought to achieve social change) and non-strategic. However, this differentiation is difficult since some cases may originate as non-strategic but engender significant influence that extends beyond the two parties to the case, and affects social policy and legal developments.

Dr Aristova, therefore, suggested an alternative approach based on subject

matter, classifying cases into seven categories: (1) administrative challenges to government decision-making under planning and environmental legislation; (2) cases relating to the reduction of greenhouse gas (GHG) emissions; (a) those that compel companies to adjust their business practices and (b) those that involve taking legal action against individual mining or other development projects for GHG emissions contributing to climate change; (3) cases on remediation of climate change-related damage, which focus on liability for harms arising from the warming effects of climate change or compensation for alleged environmental and/or climate change damage resulting from specific activities by the defendant; (4) cases on misleading advertisement and consumer protection; (5) lawsuits against companies and directors requiring transparency on financial and liability risks faced by businesses because of climate change; (6) human rights, indigenous rights, and constitutional rights claims; (a) challenging proposed projects on human rights grounds or (b) demanding human rights due diligence under the French Duty of Vigilance Law; and (7) other cases not covered by earlier categories.

THE DRAFT EU CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE

Dr Monika Feigerlová, a researcher at the Czech Academy of Sciences Centre for Climate Law and Sustainability, noted that there is currently no legally binding obligation on companies to reduce greenhouse gas emissions at the international level. However, as climate change and its adverse impacts have been increasingly recognised as a human rights issue, there is a growing consensus that companies should exercise human rights due diligence as set out in the UNGPs in order to identify and prevent their actual and potential adverse

impacts. Nowadays, there is a clear shift from voluntary standards to legislative measures and duties, starting with transparency and disclosure requirements and currently leading to an upsurge of mandatory due diligence laws with legal sanctions.

The 2022 draft EU Commission proposal of the corporate sustainability due diligence (CSDD) directive is the most advanced example of a legislative instrument that seeks to make human rights and environmental due diligence processes for companies required by law. At this moment, there are two other documents discussed as part of the EU legislative processes, namely the EU Council position, entitled the General Approach and published in December 2022, and the report prepared by the European Parliament's rapporteur, Lara Wolters, released in November 2022. Dr Feigerlová discussed whether and how climate aspects are part of a mandatory due diligence process proposed in the drafts; what obligations, if any, the proposals impose on greenhouse gas emitters; and how the draft legislation shapes the contours of corporate climate responsibility. The CSDD directive addresses corporate responsibilities for actual and potential human rights adverse impacts and environmental adverse impacts, and Article 15 is specifically devoted to combating climate change. The provision stipulates that states need to ensure that companies will adopt and implement plans to make their business model and strategy compatible with the transition to sustainable economy and the Paris Agreement's goal of limiting global warming to 1.5 °C. The proposal is a positive development regarding corporate accountability for climate crisis; however, the Commission's proposal suffers a fundamental shortcoming in that it excludes climate aspects from both human rights and environmental due diligence.

STAKEHOLDER ENGAGEMENT

Dr Lara Bianchi, an assistant professor in business and society at the International Centre for Corporate Social Responsibility, University of Nottingham Business School, highlighted the need for meaningful engagement in conflict-affected societies. She spoke about the work of the MCAT project in the Southern Philippine region of Mindanao, which seeks to intercept context fragility with marginalisation by exploring how societies at the edge of instability are especially vulnerable to climate change. Dr Bianchi discussed the impact of climate change on people's human dignity, human security, sustainable development, and resilience. She also noted the need to consider the multiplier effect of conflict and environmental changes, and the role of developmental actors in the reconstruction process of conflict-affected societies.

Although stakeholder engagement is an expected step, developmental actors usually overlook it by failing to consider all of the variables. The report of the Working Group on the issue of human rights and transnational corporations and other business enterprises recognised the need for a Heightened Due Diligence process in societies where the effects of conflict remain. However, the implementation of stakeholder engagement practises is often mainstream, not context-sensitive, and fails to adequately consider the intersections that exist.

Dr Bianchi suggested that a more radical approach is required to achieve a heightened participatory approach to engagement, one based on risk to people, not risk to businesses. This involves the engagement process being emancipatory and empowering, transforming participants from a status of objects to the status of subjects, and considering context and the lived experiences of

people that deal with the impacts of conflict and climate change. Stakeholder engagement is an essential part of this process, and it is important to consider multipliers of vulnerability and marginalisation in order to create a meaningful engagement process and considerations on cascading disasters.

A draft of this report was prepared by Zinhle Koza, PhD researcher at the University of Nottingham School of Law.